REMARKS

Claims 12-23 and 26-34 are pending in the Application, and all of those claims were rejected in the Office Action dated May 28, 2008. Claims 12, 15, 16, and 22 are amended by this response. Claims 12 and 16 are independent claims, while claims 13-15 and 26-31, and 17-23 and 32-34, depend either directly or indirectly from independent claims 12 and 16, respectively.

The Applicants respectfully request reconsideration of claims 12-23 and 26-34, in light of the following remarks.

Rejection of Claims Under 35 U.S.C. §101

Claims 12-15 and 26-31 stand rejected under 35 U.S.C. §101. The Office Action asserts that these claims are "directed to non-statutory subject matter." (*See* Office Action at p. 2.) The Office Action states, "Claim 12 is directed to a method and overlaps disclosure of a system 'wherein the system comprises the electronic device and a network'." (*Id.*) Applicants respectfully traverse the rejection, as claim 12 is clearly directed to a method, and, in any event, is not directed to non-statutory subject matter. Nevertheless, in the interest of expediting prosecution, Applicants have amended claim 12 to delete the "wherein the system comprises the electronic device and a network" language (claims 13-15 and 26-31 depend from claim 12). Applicants respectfully submit that this amendment does not alter the scope of claim 12 or result in an estoppel. Applicants respectfully request that the rejection of claims 12-15 and 26-31 under 35 U.S.C. §101 be withdrawn.

Rejection of Claims Under 35 U.S.C. §112

Claims 12-15, 22-23, and 26-31 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action states, "Claim 12 recites the limitation 'wherein the system comprises the electronic device and

a network'. The claim is viewed as vague and indefinite because the claim is directed to neither a 'process' nor a 'machine', but rather embraces or overlaps two different statutory classes." (Office Action at p. 3.) Applicants respectfully traverse the rejection. Nevertheless, as also discussed above, claim 12 is amended by the present response to remove the phrase "wherein the system comprises the electronic device and a network." Applicants respectfully submit that this amendment does not alter the scope of claim 12 or result in an estoppel.

Claim 12 and its dependent claims also stand rejected under 35 U.S.C. §112, second paragraph, for reciting the limitation "managing the lifecycle of the updating information by enabling and disabling distribution of the updating information according to a state in the lifecycle of the updating information." The Office Action stated, "There is insufficient antecedent basis for the phrase 'the lifecycle' in the claim. It is unclear as to what the applicant is referring to." (Office Action at p. 3.) Applicants respectfully submit that claim 12, which recites "the lifecycle of the updating information" is sufficiently clear. Nevertheless, claim 12 is amended by the present response to recite "updating information having a lifecycle" for additional clarification. Applicants respectfully submit that this amendment does not alter the scope of claim 12 or result in an estoppel. Applicants respectfully request that the rejection of claims 12-15 and 26-31 under 35 U.S.C. §112 be withdrawn.

Also, claim 22, and claim 23 that depends from claim 22, stand rejected under 35 U.S.C. §112, second paragraph. The Office Action states, "There is insufficient antecedent basis for the phrase 'the total number' and 'the time'." (Office Action at p. 3.) Claim 22 is amended by the present response to recite "a total number" and "a time." Applicants respectfully submit that this amendment does not alter the scope of claim 22 or result in an estoppel. Applicants respectfully request that the rejection of claims 22-23 under 35 U.S.C. §112 be withdrawn.

Rejection of Claims Under 35 U.S.C. §102(e)

Claims 12-23 and 26-34 stand rejected under 35 U.S.C. §102(e) as being anticipated by Thurston *et al.*, U.S. Publication No. 2003/0217193 (hereinafter "Thurston"). Applicants respectfully traverse the rejection of those claims as discussed below.

Claim 12 and its dependent claims

Applicants respectfully traverse the anticipation rejection of claim 12 and its dependent claims. Nevertheless, in the interest of expediting prosecution, claim 12 is amended by the present response to clarify certain aspects of its claimed subject matter.

Claim 12 is amended by the present response to recite "populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed" after "communicating the saved updating information to a distribution environment..." and before "managing the lifecycle of the updating information..." Support for this amendment can be found, for example, in the Specification at ¶¶ 59-62. Thus, claim 12 recites a method for updating firmware in an electronic device of a system, the method comprising, *inter alia*, communicating the saved updating information to a distribution environment comprising a network that distributes the updating information to one or more electronic devices; populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed; and managing the lifecycle of the updating information by enabling and disabling distribution of the updating information according to a state in the lifecycle of the updating information. Applicant respectfully submits that Thurston does not anticipate such a method.

For example, the Office Action cites Thurston at [0024] as disclosing "saving the generated updating information in a storage," and at Figure 7 and [0052] – [0053] as disclosing "managing the lifecycle of the updating information by enabling and disabling distribution of the updating information according to a state in the lifecycle of the

updating information." (*See* Office Action at p. 4.) Paragraph [0024] of Thurston reads as follows:

> [0024] Described implementations divide firmware update operations into device-independent and device dependent steps. Implementations provide a device independent application coupled to a plurality of device dependent applications for updating firmware in hardware devices coupled to a computer system. The device independent application is an application that does not perform operations that are dependent on characteristics of the hardware devices coupled to the computer system. The device dependent applications are applications that may contain operations that are dependent on characteristics of the hardware devices coupled to the computer system. A different device dependent application may be provided for each type of hardware device, including same device types from different vendors or different device types. The device independent and the device independent [sic] applications together provide a firmware update application. The implementations also provide a data structure for storing firmware images such that the firmware update applications can interpret the data structure and update firmware images on hardware devices.

Applicants respectfully submit, as an initial matter, that the cited portion of Thurston, which merely mentions a "data structure for storing firmware images such that the firmware update applications can interpret the data structure and update firmware images on hardware devices" does not disclose "saving the generated updating information in a storage" as claimed in claim 12. In any event, Applicants further respectfully submit that the cited portion of Thurston does not disclose "populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed" as claimed in amended claim 12 (which also claims "communicating the saved updating information to a distribution environment...", before, and "managing the lifecycle of the updating information...", after, "populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed").

Paragraphs [0052] and [0053], cited by the Office Action as disclosing "managing the lifecycle of the updating information by enabling and disabling distribution of the updating information according to a state in the lifecycle of the updating information," read as follows:

> [0052]   Control proceeds to block 704, where the device independent firmware update utility 302 requests the device dependent plug-in module 306 to confirm that system wide constraints are being satisfied before proceeding with the firmware installation. The system wide constraints may be distributed within the firmware update application 200 or the firmware package 108a, and may include constraints such as the version of the operating system, the amount of available storage, etc., that may need to be satisfied before installing the binary firmware image 404. The device dependent plug-in module 306 receives (at block 706) the request to verify the system wide constraints. The device dependent plug-in module 306 verifies (at block 708) the system wide constraints. If the system wide constraints are satisfied then the status is said to be "verified." In contrast, if the system wide constraints are not satisfied then the status is said to be "not verified." The device dependent plug-in module 306 sends (at block 710) the status on the verification of the system wide constraints to the device independent firmware update utility 302.

> [0053]   At block 712, the device independent firmware update utility 302 receives the status on the verification of the system wide constraints from the device dependent plugin module 306. If the system wide constraints are "not verified" (at block 712), then control proceeds to block 714 where the device independent firmware update utility 302 performs cleanup operations and exits. Cleanup operations may include closing files that are open, disposing of pointer data structures, closing network connections, etc. If at block 712, the device independent firmware update utility 302 receives a "verified" status for the system wide constraints, then control proceeds to block 716 where the device independent firmware update utility 302 passes the device dependent plug-in module 306 the list of properties package 402 containing the dynamic constraints, and requests the device dependent plug-in module 306 to discover matching hardware devices 310, 311 for firmware update.

As an initial matter, Applicants respectfully traverse the Office Action's assertion that the above cited portions of Thurston disclose "managing the lifecycle of the updating information by enabling and disabling distribution of the updating information according to a state in the lifecycle of the updating information." In any event, the above cited portions of Thurston do not remedy the previously identified shortcomings in the disclosure of Thurston to disclose "populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed." For example, the cited portion of Thurston discusses verification of system-wide and dynamic constraints of a firmware image being installed. Such a disclosure does not teach an update store that acts as a repository of update packages whose lifecycle may be managed, let alone populating the updating information in an update store that acts as a repository of update packages whose lifecycle may be managed. As a result of the foregoing, Applicants respectfully submit that Thurston does not disclose each and every element of claim 12 arranged in the same order, or in as complete of detail as required by claim 12, and therefore cannot anticipate claim 12.

Applicants further submit that claims dependent from claim 12 are further allowable over Thurston for additional reasons. For example, claim 15 is amended by the present response to clarify exemplary patentably distinct aspects of that claim. Amended claim 15 recites the method of claim 12, the method comprising, *inter alia*, retrieving the requested updating information from the update store. Support for this amendment may be found, for example, in the Specification at ¶ 59. The Office Action cites only to Figure 7 of Thurston for disclosing aspects specific to claim 15. (*See* Office Action at p. 5.) Applicants respectfully submit that the cited portion of Thurston (Fig. 7) does not disclose, for example, retrieving the requested updating information from the update store.

As an initial matter, Applicants respectfully traverse the Office Action's assertion that Figure 7 of Thurston discloses "receiving requests for updating information." Figure 7 appears to illustrate, at most, three requests. Each of these requests is made from the "Device independent firmware update utility 302" to the "Device dependent plug-in module 306." For example, at 704, the device independent firmware update utility 302

"[r]equest[s] device plug-in module to confirm that system wide constraints are met." Such a request is not for updating information as claimed in claim 15. At 716, the device independent firmware update utility 302 "[r]equest[s] the device plug-in module to discover matching hardware devices, passing the device plug-in module the list of properties." Again, that "request" is not for updating information as claimed in claim 15. A third request in Fig. 7 occurs at 726, "For each device on the list call the device plug-in module to download the firmware image to the device." Once again, that "call" is not for updating information as claimed in claim 15. Such a call to download, made from the device independent firmware update utility is quite different from, and does not disclose, a request for updating information. In Fig. 7, the device independent firmware update utility is requesting devices to which to send a firmware image -- a call to send a firmware image is different from a request for updating information (which is a request to receive updating information). Put another way, a request to send is different from, and does not disclose, a request to receive.

Even if, *arguendo*, Thurston did disclose a request for updating information from the electronic device, Thurston would still not anticipate claim 15, as Thurston does not disclose "retrieving the requested updating information from the update store." From above, Thurston does not disclose an update store as claimed in claim 12 and its dependent claims including claim 15, let alone retrieving the requested updating information from the update store. Moreover, the "requests" of Fig. 7 only occur after the "firmware utility with firmware update package as an input file" has already been received by the device independent firmware update utility 302, and therefore it would not make sense in Thurston to retrieve the requested updating information from the update store, as claimed in claim 15. As a result of the foregoing, Applicants respectfully submit that Thurston does not disclose each and every element of claim 15 arranged in the same order, or in as complete of detail as required by claim 15, and therefore cannot anticipate claim 15.

Claim 16 and its dependent claims

Applicant respectfully traverses the anticipation rejection of claim 16 and its dependent claims. Nevertheless, in the interest of expediting prosecution, claim 16 is

amended by the present response to clarify certain aspects of its claimed subject matter.

Claim 16 is amended by the present response to recite, *inter alia*, "the network comprising an update store comprising a repository of update packages having lifecycles managed by the lifecycle management component." Support for this amendment can be found, for example, in the Specification at ¶¶ 59-62.

In rejecting claim 16, the Office Action cites to and relies on the same portions of Thurston as the Office Action cites to and relies on to reject claim 12. For at least similar reasons to those previously discussed in connection with claim 12, the cited portions of Thurston do not disclose, at least, "the network comprising an update store comprising a repository of update packages having lifecycles managed by the lifecycle management component." As such, Applicants respectfully submit that Thurston does not anticipate claim 16 or any of its dependent claims.

With further regard to claim 17, which depends from claim 16, Applicants note that the Office Action cited the same portions of Thurston in rejecting that claim as the Office Action did in rejecting claims 12 and 16. Applicants further note that claim 17 recites the system according to claim 16 wherein the network further "comprises a management console employed for lifecycle management of the updating information." However, the Office Action does not state where, or how, Thurston discloses that aspect of claim 17. Nor does the Office Action identify any portion of Thurston as disclosing such a management console. As such, Applicants respectfully request the withdrawal of the anticipation rejection of claim 17 for this additional reason (as well as claim 20, which also recites a management console).

Conclusion

In general, the Office Action makes various statements regarding claims 12-23 and 26-34, and the cited references, that are now moot in light of the above. Thus, Applicants will not address such statements at the present time. However, the

Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

The Applicants believe that all of claims 12-23 and 26-34 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, the Applicants invite the Examiner to contact the undersigned at (312) 775-8000 for an interview.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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